

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Redevelopment of Spectrum to)
Encourage Innovation in the)
Use of New Telecommunications)
Technologies)

ET Docket No. 92-9

To: The Commission

REPLY COMMENTS OF APPLE COMPUTER, INC.

Apple Computer, Inc. ("Apple") hereby replies to the comments filed in response to the Petition for Reconsideration filed by the Public Safety Microwave Committee, the Association of Public-Safety Communications Officials-International, Inc., the County of Los Angeles, and the Forestry-Conservation Communications Association (collectively, the "Petitioners"), seeking reconsideration of the Commission's decision in its March 31, 1994 Memorandum Opinion and Order in the above-referenced docket (the "MO&O") to permit, after an extended negotiation period and subject to significant protections, the mandatory relocation of public safety licensees from the 2 GHz band. For the reasons stated herein, Apple joins with the majority of the commenting parties in respectfully urging the Commission to reject the Petition and affirm its decision in the MO&O.

The comments filed in response to the Petition underscore what Apple has stated repeatedly in this proceeding and in the related PCS proceeding, and what the Commission recognized in the MO&O: PCS and, especially, unlicensed, nomadic PCS, cannot share spectrum with fixed microwave facilities and, therefore, all such facilities must be subject to relocation if PCS is to flourish.¹

As several commenting parties discussed, this proceeding has seen a growing recognition of the fact that sharing between PCS and fixed microwave facilities will not, in general, be possible.² The Commission's policies with respect to public safety licensees — for example, its decision not to expand the scope of the public safety exemption, and to permit re-tuning of public safety licensees — have consistently

¹ See, e.g., UTAM Comments at 4-5 and sources cited therein (discussing impossibility of spectrum sharing between nomadic unlicensed PCS devices and fixed microwave facilities); UTAM Comments at 7 (discussing effects restoring the public safety exemption would have on unlicensed PCS).

² See AMSC Opposition at 3, 5.

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reflected that increasing understanding and the resultant recognition that a broad public safety exemption could undermine the prompt deployment of PCS services.

As the comments make clear, the Commission's decision to subject all incumbent facilities, including public safety facilities, to mandatory relocation if their spectrum is needed by a PCS provider is entirely consistent with, and supported by, the record in this proceeding.³ In addition, they demonstrate that the Commission adequately explained its decision, citing filings by Apple, Rolm, APC, Cox, and UTAM which illustrate the extent of the public safety problem, especially in certain urban areas, and the effect the public safety exemption would have on the prompt development of PCS, and stating that the Commission had previously underestimated the difficulties associated with spectrum sharing.⁴ Indeed, as the comments indicate, the sources actually cited in the MO&O are but a few of the sources demonstrating a need to provide for the relocation of all incumbent licensees, including public safety licensees.⁵

Moreover, the Commission's treatment of public safety licensees in the MO&O is consistent with the basic policies that have guided its previous decisions in this proceeding, as well as with congressional intent — in each case, to recognize the unique status of public safety licensees without unduly undermining the prompt and complete development of PCS services.⁶ The Commission has protected public safety licensees by providing an extended relocation period for public safety facilities, to prevent unwarranted disruption of their services and to minimize the burdens these licensees face. It has permitted mandatory relocation only when all costs are paid by the emerging technology licensee; where relocation facilities are fully comparable to those being replaced; where all activities necessary for placing the new facilities into operation are completed before relocation; where the new communications system is fully build and tested before the relocation commences. Finally, it has provided that all relocations are subject to a one-year "prove in" period, during which the public safety operation may relocate back to its original facilities if the new facilities prove not to be equivalent in every respect to the old facilities.

³ See, e.g., Cox Opposition at 3-6.

⁴ See AMSC Opposition at 5-6; Cox Opposition at 7-8; PCIA Comments at 2-3.

⁵ See UTAM Comments at notes 10, 12; PCIA Comments at 5.

⁶ See, e.g., Cox Opposition at 8-13; AMSC Opposition at 4. Congress has expressed its strong interest in the rapid deployment of PCS services and, in particular, nomadic Data-PCS. Thus, any decision that protected public safety licensees by sacrificing unlicensed data PCS would be inconsistent with congressional intent.

The Commission's decision thus strikes an appropriate balance among the needs of the parties to this proceeding, fully recognizing the special needs of public safety licensees while taking the steps necessary to ensure that the effort to protect public safety licensees does not thwart the deployment of PCS.⁷

Apple is not aware of any detailed analysis in the record of this proceeding demonstrating how public safety licensees will be harmed by relocation, in light of the significant protections afforded to them by the Commission.

CONCLUSION

For the reasons stated herein, Apple respectfully requests that the Commission affirm its decision in the MO&O to subject all microwave facilities in the 2 GHz band, including public safety licensees, to mandatory relocation.

Respectfully submitted,

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⁷ E.g., UTAM Comments at 5-7; Cox Opposition at 2; PCIA Comments at 4.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Comments of Apple Computer, Inc. was delivered by first-class United States mail, postage prepaid, this 11th day of July, 1994, to each of the following:

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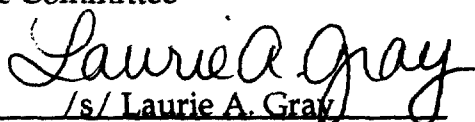
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